

JERRY S. BUSBY  
Nevada Bar #001107  
GREGORY A. KRAEMER  
Nevada Bar #010911  
COOPER LEVENSON, P.A.  
3016 West Charleston Boulevard – #195  
Las Vegas, NV 89102  
(702) 366-1125  
FAX: (702) 366-1857  
[jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
[gkraemer@cooperlevenson.com](mailto:gkraemer@cooperlevenson.com)

Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Karin Volz, an individual

Plaintiff,

vs.

THE KROGER CO., a Foreign Corporation  
dba SMITH'S #385; SMITH'S FOOD &  
DRUG CENTERS, INC., a Foreign  
Corporation dba SMITH'S #385 DOES I  
through X, inclusive, and Roe Corporations XI  
through XX, inclusive

Defendants.

Case No.

**NOTICE OF REMOVAL**

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-20-818888-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

**I.**

**NOTICE OF REMOVAL IS TIMELY**

1. On July 31, 2020, Plaintiff KARIN VOLZ, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

///

2. SMITH'S was served with process on or about August 7, 2020. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

3. The Complaint filed and served on SMITH'S merely alleged that "As a direct and proximate result of the disregard for Plaintiff's safety, recklessness, carelessness and/or negligence of the "Defendant Kroger" and/or "Defendant Smith's", Plaintiff suffered injuries to her body . . . all to Plaintiff Karin Volz's general damages in an amount in excess of \$15,000.00." (Compl. ¶23).

Plaintiff's Complaint also alleged that "Said . . . "Defendant Smith's" failure to warn of a known dangerous condition . . . had directly and proximately resulted in Plaintiff Karin Volz's damages in an amount in excess of \$15,000.00." (Compl. ¶32).

In addition, Plaintiff's Complaint alleged that "As a direct and proximate result of the, carelessness and/or negligence of the . . . "Defendant Smith's", Plaintiff Karin Volz suffered injuries to her body and shock and damage to her nervous system and person, all of which said injuries have caused, and continue to cause, Plaintiff great mental and physical pain and suffering, resulting in some permanent disability to Plaintiff Karin Volz, all to Plaintiff's general damages in an amount in excess of \$15,000.00." (Compl. ¶34).

4. Defense counsel learned that the value of this case was sufficient for Federal jurisdiction on October 7, 2020. On that date, Plaintiff filed and served a Request for Exemption from Arbitration in the pending State Court litigation. Therein, Plaintiff alleges that "Plaintiff has incurred medical bills for the treatment and surgery of this injury in an amount exceeding \$50,000 and medical specials in this case currently total approximately \$100,000." (Pl.'s Petition at 2).

Upon receiving this information, Defense counsel learned that the "amount in controversy" exceeds the jurisdictional minimum for diversity jurisdiction.

5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

6. The following pleadings have been entered and/or filed in State Court:

- a. Plaintiff's Complaint filed July 31, 2020;
- b. Affidavit of Service of Summons and Complaint filed August 11, 2020;
- c. SMITH'S Demand for Security of Costs filed August 27, 2020;
- d. Plaintiff's Notice of Posting Cost Bond filed September 15, 2020;
- e. SMITH'S Answer to Plaintiff's Complaint filed September 24, 2020;
- f. Plaintiff's Request for Exemption from Arbitration was served on October 7, 2020;
- g. Notice of Entry of Stipulation and Order to Dismiss The Kroger Co. Without Prejudice filed on October 16, 2020; and
- h. Commissioner's Decision on Request for Exemption was served on October 22, 2020.

7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

## II.

### **DIVERSITY JURISDICTION EXISTS**

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

#### **A. The Amount in Controversy Requirement is Satisfied.**

9. Plaintiff's Complaint merely alleged that "As a direct and proximate result of the disregard for Plaintiff's safety, recklessness, carelessness and/or negligence of the "Defendant Kroger" and/or "Defendant Smith's", Plaintiff suffered injuries to her body . . . all to Plaintiff Karin Volz's general damages in an amount in excess of \$15,000.00." (Compl. ¶23).

Plaintiff's Complaint also alleged that "Said . . . "Defendant Smith's" failure to warn of a known dangerous condition . . . had directly and proximately resulted in Plaintiff Karin Volz's damages in an amount in excess of \$15,000.00." (Compl. ¶32).

1 In addition, Plaintiff's Complaint alleged that "As a direct and proximate result of the,  
2 carelessness and/or negligence of the . . . "Defendant Smith's", Plaintiff Karin Volz suffered  
3 injuries to her body and shock and damage to her nervous system and person, all of which said  
4 injuries have caused, and continue to cause, Plaintiff great mental and physical pain and  
5 suffering, resulting in some permanent disability to Plaintiff Karin Volz, all to Plaintiff's  
6 general damages in an amount in excess of \$15,000.00." (Compl. ¶34).

7 10. In addition to the above, Plaintiff's Request for Exemption from Arbitration served  
8 on October 7, 2020 indicated that "Plaintiff has incurred medical bills for the treatment and surgery  
9 of this injury in an amount exceeding \$50,000 and medical specials in this case currently total  
10 approximately \$100,000." (Pl.'s Petition at 2).

11 **B. The Parties Are Diverse.**

12 11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and  
13 believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of  
14 California. (See Compl. ¶1) .

15 12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio  
16 Corporation with its principal place of business in the State of Utah.

17 **III.**

18 **REMOVAL TO THIS JURISDICTION IS PROPER**

19 13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state  
20 court action to this Court is appropriate.

21 14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and  
22 division embracing the place where the state action is pending 28 U.S.C. §108.

23 15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

24 16. SMITH'S reserves all defenses, including, without limitation, the defense of lack of  
25 personal jurisdiction.

26 17. SMITH'S requests a trial by jury of all issues.

27 18. Defense counsel is providing Plaintiff, by and through her counsel, written notice of  
28 the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is

1 filing a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court, Clark  
2 County, Nevada, where the action is currently pending.

3 Dated this 6th day of November, 2020.

4 COOPER LEVENSON, P.A.

5  
6 By /s/ Jerry S. Busby

7 Jerry S. Busby

8 Nevada Bar No. 001107

9 Gregory A. Kraemer

10 Nevada Bar No. 010911

11 3016 West Charleston Boulevard – #195

12 Las Vegas, NV 89102

13 Attorneys for Defendant

14 SMITH'S FOOD & DRUG CENTERS, INC.